

MEMORANDUM

DEPARTMENT OF GAME AND FISH

DATE: October 30, 2009
TO: Commissioned Officers
FROM: Dan Brooks
RE: OHV Agriculture Operating Exemption

The Off-highway Motor Vehicle Act provides for an exemption for persons operating an off-highway motor vehicle (OHV) for agricultural purposes. The act states:

66-3-1005. Exemptions.

The provisions of the Off-Highway Motor Vehicle Act [66-3-1001 NMSA 1978] shall not apply to persons who operate off-highway motor vehicles on privately held lands or to off-highway motor vehicles that are:

F. farm tractors, as defined in Section 66-1-4.6 NMSA 1978, special mobile equipment, as defined in Section 66-1-4.16 NMSA 1978, or off-highway motor vehicles being used for agricultural operations;

There are several key components to this that officers need to consider prior to taking any enforcement action. The exemption applies to:

- 1) Any person (this would include juveniles as well as adults).
- 2) Any OHV vehicle (regardless of type or size, including no requirements for spark arrestors, headlights, etc.).
- 3) Any agriculture use (going to the feed store, checking livestock, farming, gardening, etc.).
- 4) All of 66-3-1001 to 66-3-1020 NMSA 1978 (including operation on paved roads).

As officers you have the ability to stop any operator and investigate prohibited uses that appear to violate these statutes or rules. However, please ensure that you have individual information and evidence prior to issuing a penalty assessment misdemeanor citation for any infraction of the Off-highway Motor Vehicle Act including evidence that a claimed agriculture exemption does not apply. For example, if an operator claims their use is related back to agriculture activities, conduct a thorough investigation into this claim. Likewise, if a person(s) appears to fall under this exemption, please advise the OHV operator of the risks inherent to operation on paved roads, including the manufacturer's warning against such operations because of safety concerns. For now, document these encounters noting your "safe operation advice" through field notes and in the near future a form (similar to 10-98) will be developed for distribution to officers.

Even though there is a broad exemption for persons participating in agricultural operations, there may be other prohibitions that apply. Many government entities with the proper authority can pass prohibitions governing the health, safety and welfare of their citizenry or the use of public thoroughfares that can prohibit certain types of travel. So, there could be other restrictions or prohibitions outside of the provisions of the Off-highway Motor Vehicle Act that could apply to OHV use, even to agricultural operators. In most instances, this will be outside of your authority established in 17-2-19 or 66-3-1015 NMSA 1978.

cc: Patrick Block, Assistant Director